

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
)	WT Docket No. 17-79
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)	
Accelerating Wireless Broadband Deployment by)	
Removing Barriers to Infrastructure Investment)	
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)	

COMMENTS OF THE ILLINOIS MUNICIPAL LEAGUE

These Comments are filed by the Illinois Municipal League (IML) in response to the Public Notice in the above-entitled proceeding.

Introduction

The IML is a not-for-profit, non-political association of 1,259 municipalities in the State of Illinois. State statute designates it as an instrumentality of its members. 65 ILCS 5/1-8-1 (West 2014). The IML's mission is to articulate, defend, maintain and promote the interests and concerns of Illinois communities.

I. Streamlining State and Local Review

In its Notice of Proposed Rulemaking, the Federal Communications Commission (FCC) requested information on ways to streamline state and local procedures for reviewing siting applications. Specifically, the FCC sought comment on the impact of adopting proposals to establish a deemed granted remedy, reduce the length of time municipalities have to review an application, and impose further restrictions on municipalities' ability to initiate a moratoria on processing applications. IML does not believe Illinois laws, statutes, or local ordinances discourage or create barriers to broadband deployment. Indeed, assisting residents in accessing quality, competitive broadband service is a top priority for municipal leaders because they understand the need of their residents to be online for their business and personal use.

In 2007, IML prepared a model Right-of-Way Control Ordinance based on best practices that addressed siting of public utilities. Many Illinois communities have adopted the model ordinance. In 2016, IML worked with municipal attorneys and attorneys from the telecommunications industry to create a model Small Cell Antenna/Tower Right-of-Way Siting Ordinance that dovetails with the 2007 model Right-of-Way Control Ordinance. It represents an effort by Illinois municipalities and IML to develop reasonable standards intended to strike a

balance between the needs of wireless carriers to increase deployment, and the needs of municipalities to preserve proper use of the right-of-way with a focus on safety and protection of other utilities located in the right-of-way.

Municipalities in Illinois continue to work alongside members of the wireless industry. This spring, IML negotiated the Small Wireless Facilities Deployment Act, a bill under consideration by the Illinois General Assembly, with legislators and members of the telecommunications industry. The bill allows for a wireless infrastructure provider to site small wireless facilities in the municipal right-of-way while also protecting municipal interests and rights. For example, small wireless facilities would be classified as a “permitted use” and not subject to municipal zoning review. Furthermore, municipalities may only charge application fees that represent the actual, direct, and reasonable costs incurred by the municipality in reviewing the application. IML believes local ordinances and the proposed Illinois Small Wireless Facilities Deployment Act sufficiently address the deployment concerns of the FCC.

a. Deemed Granted Remedy & Period of Time to Act on Applications

The Illinois Small Wireless Facilities Deployment Act establishes a 90-day deemed granted remedy if a municipality fails to act on a siting application. This provision was negotiated by representatives of the wireless industry and is favorable to the deemed granted remedies proposed by the FCC that would reduce the timeframe for review of facility deployment from 90 days to 60 days.

Reducing response time by a third (30 days) would restrict the ability for many municipalities to respond at all, particularly those that review applications at monthly public meetings. Such a reduction would limit a municipality’s ability to substantively review an application and would force decisions based on incomplete or faulty information. Retaining the 90-day review period allows municipalities with limited staffing capabilities the ability to ensure siting requests are structurally sound in order to preserve the health, safety, and welfare of the public.

b. Moratoria

IML is unaware of any Illinois municipality that has adopted a moratorium to delay or prohibit a siting request for a facility in the right-of-way. However, the operational realities of many small municipalities is that there are limited capabilities both in terms of expertise in new technologies and the ability of staff to process applications, particularly when filed as a bulk permit. The availability of moratoria, even if in limited duration, would afford those communities with fewer resources the opportunity to develop a plan with the wireless industry for siting options.

II. Aesthetic Considerations in Local Approval Process

The FCC also expressed an interest in comments on the proper role of aesthetic considerations in the local approval process. Aesthetic considerations may be used as grounds to deny siting

applications when the proposed facilities would adversely affect an area's aesthetic qualities. *Town of Amherst v. Omnipoint Communi'ts Enterprises, Inc.*, 173 F.3d 9, 16 (1st Cir. 1999).

IML strongly opposes any further guidance restricting local aesthetic requirements. Along with safety and structural concerns, municipalities must maintain the aesthetic value of their right-of-way. Municipalities have a duty to their residents to protect the welfare of the public, which includes making capital improvements to the right-of-way. Many municipalities in Illinois have invested public funds and time in bettering the aesthetic value of their downtowns and historic neighborhoods in order to attract and retain businesses, consumers, and residents. These efforts have included, for example, undergrounding and camouflaging lines along main commercial routes, which can cost municipalities significant amounts of money to complete and requires auxiliary equipment (transformers, junction boxes, amplifiers, etc.) to be placed in underground vaults, or placed in consolidated locations, mounted on the ground, and landscaped. Historical property would also be detrimentally impacted. Many municipalities have carefully installed light poles conforming to agreed-upon design criteria, equally spaced to be compatible with historic properties. Restricting local control of aesthetic requirements would be substantially disruptive to historic downtown revivals and property values. The siting application process must ensure that municipalities are able to approve collocation requests that are aesthetically appropriate to each location, and deny those requests that violate objective aesthetic standards.

The Small Wireless Facilities Deployment Act includes a provision that would require wireless providers comply with design or construction standards applicable to equipment located in the right-of-way. Wireless industry agreed to this language because it realized the importance that visual characteristics have in retaining local character and property value in communities. IML believes local ordinances, along with the Illinois Small Wireless Facilities Deployment Act, adequately protect aesthetic concerns while also allowing for sufficient deployment of broadband facilities.

III. Municipalities have a Public Duty to Regulate the Right-of-Way

The Notice of Proposed Rulemaking also sought comment on whether the FCC should enact rules to promote the deployment of broadband infrastructure by preempting state and local laws that inhibit broadband deployment. While local governments enthusiastically support the goals of providing reliable cellular coverage throughout communities and encouraging the new frontier of technology such as 5G, IML believes the FCC should refrain from impetuously enacting rules that preempt state and local laws because such rules would diminish the local ability to protect the public health, safety, and welfare.

Today's municipal right-of-ways are complex environments. Municipalities presently manage the competing and often conflicting needs of electric, natural gas, water, sewer, storm water, telecommunications and cable industries in a very limited space. Allowing a single actor in that environment to override the judgment of local officials will create unnecessary disputes and may impair public safety and delivery of services.

Illinois state law provides municipalities extensive discretion with respect to permitted uses, special uses, and variances with respect to land uses. This discretion is rooted in decades of legal precedent and in the variety of urban, suburban, and rural small/medium communities and how land use planning impacts each type of community differently. Different land uses within a municipality may necessitate different siting and aesthetic requirements. These specific needs must be addressed in the application process and require municipalities to examine applications on an individual basis to ensure collocation requests are structurally sound given the location and its environment.

Conclusion

The Illinois Municipal League thanks the FCC for its efforts to better understand the work being done at the local government level to ensure safe, responsible deployment of wireless infrastructure, particularly those built in the public right-of-way. IML strongly urges the Commission to consider these comments, as well as those submitted by communities and other public interests across the country, before taking any action that may adversely affect local governments' right-of-way authority.

Respectfully submitted,

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